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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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**AUG 2 1994**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-107
DAVID A. RINGER	)	File No. BPH-911230MA
ASF BROADCASTING CORPORATION	)	File No. BPH-911230MB
WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
SHELLEE F. DAVIS	)	File No. BPH-911231MA
OHIO RADIO ASSOCIATES, INC.	)	File No. BPH-911231MC

For Construction Permit  
For New FM Radio Station at  
Westerville, Ohio

To: The Review Board

**RESPONSE TO OPPOSITIONS**

WILBURN INDUSTRIES, INC.

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Its Attorneys

Dated: August 2, 1994

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### SUMMARY

In its July 15, 1994 Petition for Leave to Amend, Wilburn requested leave to amend its application to include a revised technical proposal specifying a new transmitter site, a certification concerning the availability of the new site and a certification that it will have the financing available to meet increased construction costs at that new site. Shellee F. Davis and Ohio Radio Associates, Inc. have filed oppositions to the Petition. The instant Response is directed to those portions of the oppositions which propound plainly false and disingenuous claims which may have the effect of misleading the Review Board and obfuscating the matters at issue.

## RESPONSE TO OPPOSITIONS

Wilburn Industries, Inc. ("Wilburn"), by its attorneys, hereby submits its Response to Oppositions to Wilburn's July 15, 1994 Petition for Leave to Amend which were filed by Shellee F. Davis ("Davis") and Ohio Radio Associates ("ORA") on July 22, 1994, stating as follows:<sup>1</sup>

### **A. Introduction**

In its July 15, 1994 Petition for Leave to Amend, Wilburn requested leave to amend its application to include a revised technical proposal specifying a new transmitter site, a certification concerning the availability of the new site and a certification that it will have the financing available to meet increased construction costs at that new site. The amendment, which became necessary after the unforeseeable and involuntary loss of Wilburn's initial site, was filed slightly more than three months after Wilburn learned that assurance for the use of its initial site had been withdrawn. During that period, Wilburn had its consulting engineer design a new technical proposal, ascertained the cost of constructing that facility at the new

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<sup>1</sup> Wilburn also is filing its Request for Acceptance of the instant Response. It should be noted that Wilburn is not addressing each argument raised in the Oppositions, but only those which have been raised before the Board for the first time and are predicated upon false and/or disingenuous statements of fact or law.

site, and obtained reasonable assurance of the financing necessary to meet the increased costs which it has ascertained.<sup>2</sup>

Davis and ORA have opposed acceptance of Wilburn's amendment. As demonstrated below, however, both oppositions are frivolous at best and in material part proffer contentions which Davis and ORA have reason to know are misleading.

**B. The Davis Opposition**

Davis opposes the acceptance of Wilburn's amendment by alleging: (1) that the amendment was not filed with due diligence; (2) that Wilburn has not received reasonable assurance of the availability of its site; (3) that acceptance would require the addition of a new "air hazard" issue; and (4) that Wilburn has failed to supply documentation to support its updated financial certification.

(1) Due Diligence. Davis asserts that Wilburn has failed to show that it amended its application with due diligence, attempting to contrast the circumstances in this case with those of Elijah Broadcasting Corp., 65 RR 2d 461 (Rev. Bd. 1988), where such an amendment was accepted. Davis Opposition, pp. 5-6. It

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<sup>2</sup> Wilburn had not ascertained these costs or obtained such financing when it initially filed its application because it had received assurances that it could lease the already-built facilities of former Station WBBY-FM.

also suggests in this regard that Wilburn has been "less than candid" with the Commission because Wilburn obtained a reasonable assurance letter for its new site on March 31, 1994, one week before it claims to have learned that the assurance for its initial site was being withdrawn. Davis Opposition, pp. 6-7.

These contentions are specious. As an initial matter, the period between April 8, 1994 and July 15, 1994 is not on its face an unreasonable period within which to have an entirely new engineering proposal prepared, to determine the costs of constructing the facilities specified in that proposal and to secure new financing to meet such costs. Indeed, the Commission has held that an applicant taking twice as long to do so has acted with due diligence. Elijah Broadcasting Corp., supra. Such conclusion is particularly appropriate in this instance where, as explained in the amendment filed by Wilburn on April 13, 1994, Wilburn moved to secure a new site immediately upon learning that its initial site might not remain available and promptly advised the Commission when assurance of that site's availability actually was later withdrawn.<sup>3</sup>

In this regard, Davis' allegation that Wilburn has been "less than candid" itself lacks candor. As explained in Wilburn's April 13, 1994 amendment, and as Davis therefore knows,

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<sup>3</sup> Wilburn's April 13, 1994 amendment is appended as Attachment A hereto.

Wilburn learned in early March, 1994, that the site initially specified in its application had been sold. As further explained in the amendment, Wilburn promptly contacted the new owner and, when the new owner declined to give Wilburn reasonable assurance of the site's continued availability until he had discussed the matter with his counsel, Wilburn's principal secured an alternative site from Mrs. Dolores Buell, who wrote him a letter confirming such availability on March 31, 1994. Thereafter, the new owner did agree to make the initial site available to Wilburn, and Wilburn prepared an amendment to so advise the Commission. Just before Wilburn filed such amendment, however, on April 8, 1994, the new owner retracted such assurance, and Wilburn therefore filed a different amendment on April 13, 1994, advising the Commission of the alternative site for which it earlier obtained assurance from Mrs. Buell. All of these facts and circumstances were carefully explained in Wilburn's amendment and known to Davis. Her arguments to the Board thus raise a substantial question about her own candor with the Commission.

(2) Site Availability. Davis alleges that Wilburn has not received reasonable assurance that its new site will be available to it because Wilburn has not correctly identified the owner of the site. Davis Opposition, pp. 7-8. According to Davis, Wilburn's amendment indicates that Mrs. Dolores Buell is the owner of its site whereas the actual owner is the estate of Hugh Buell, the late husband of Dolores Buell. Id. Davis also

contends that occupancy rights to the site already have been conveyed to a third party, a farmer who rents the land and who must consent to its use by Wilburn. Davis Opposition, pp. 8-11. To support the latter claim, Davis submits a letter from Mrs. Buell dated May 25, 1994, wherein Mrs. Buell advises Davis that any use of the land by Davis will require the "release" of the current tenant. Id.

These allegations, too, are specious. As an initial matter, Davis provides no documentation or other support for her claim that Mrs. Buell does not hold an ownership interest in the land in question, and it would be unusual for a wife not to have held land jointly with her husband. Moreover, as Davis knows, Mrs. Buell explicitly identifies herself as "owner of the real estate" in her letter to Wilburn. Finally, as Davis is aware, Mrs. Buell executed her March 31, 1994 letter to Wilburn twice, once as an individual and once as the Executor of the Estate of Hugh Buell. See Attachment A. Davis' arguments to the Board in this regard therefore are, at best, grossly disingenuous.

Furthermore, in her letter to Wilburn, Mrs. Buell stated, without qualification, that she has "full authority to enter into a lease agreement" for the site. In this regard, as stated in the attached notarized Statement of Charles Wilburn, who negotiated with Mr. Buell and obtained Wilburn's letter, Mrs. Buell advised him at that time that a farmer had been leasing



approximately 700 acres from her and her late husband, but that this arrangement would not preclude her from renting five acres of that land to Wilburn.<sup>4</sup> Mr. Wilburn's Statement also recites that no lease for the Buell property has been registered in the County recorder's office, so that there is no legal limitation on her right to lease a portion of that land to Wilburn if she chooses to do so. Finally, Wilburn submits, as an attachment to his Statement, a letter signed by Mr. Fred Hendren, the farmer in question, which gives Wilburn any release which, arguendo, may be necessary. For a variety of reasons, therefore, Davis' argument must be rejected.<sup>5</sup>

(3) New Issue. Davis asserts that Wilburn's amendment must be denied because, although ORA earlier had received FAA clearance for a tower at that site, Wilburn's proposed tower would be two meters taller than ORA's tower, necessitating a new FAA clearance. Davis Opposition, pp. 11-12. In the absence of such clearance, Davis contends, a new, "air hazard" issue would

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<sup>4</sup> Mr. Wilburn's Statement is appended as Attachment B hereto.

<sup>5</sup> Wilburn cannot state why Mrs. Buell declined to provide assurance to Davis as she did with Wilburn, but it appears that Davis (or her counsel) stimulated the inclusion of the additional condition set forth in the May 25, 1994 letter received by Davis. It may be that Davis did not appear to be a desirable tenant (in contrast to Wilburn's letter, the text of the Davis letter indicates that she apparently could not make the requisite showing of satisfactory financial qualifications) or it may be that Davis believed that it was more important to obtain a letter which could be used to attack Wilburn than it was to negotiate access to the site for herself.

have to be specified and an amendment cannot be accepted in such circumstances.

The contentions advanced by Davis again miss the mark. As anyone familiar with FCC proceeding procedures is aware, every applicant proposing to erect a new tower must obtain a determination of no air hazard from the FAA, even if the proposed tower would be identical in height (or even lower) than a tower earlier approved for another applicant at the site. Moreover, because notice to the FAA is made when an engineering proposal has been finalized and because the filing of an amendment to the FCC should not be delayed, FAA approval ordinarily cannot be obtained prior to filing an amendment with the Commission.<sup>6</sup> Davis gives no hint of these critical facts to the Board, although adopting her position would lead to a ruling which would mandate the denial of virtually every post-designation engineering amendment which is filed by any applicant which does not propose to use an existing tower. It therefore may be more appropriate to accept the amendment conditioned upon FAA issuance of a no air hazard determination or, at the least, to hold action on the amendment in abeyance pending the release of a

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<sup>6</sup> When FAA approval is not obtained prior to designation, the Mass Media Bureau's FM Branch may routinely include an "air hazard issue" in a Hearing Designation Order, but as Davis' experienced counsel surely is aware, such issues are routinely set to the side while the remainder of the issues are tried and until an FAA determination has been released.

determination by the FAA, but the Board should not issue a ruling which ignores the full implications of Davis' argument.

In this regard, the FAA has advised Wilburn that it would issue a determination of no air hazard if Wilburn provides written assurance that spurious transmitter radiation will be attenuated 85 dB in the frequency range 118 MHz - 137 MHz, to preclude adverse electromagnetic impact on aviation communication frequencies. Wilburn has provided such assurance to the FAA and is awaiting issuance of the appropriate determination, which is expected later this week.

(4) Financial Documentation. Davis finally opposes acceptance of the Wilburn amendment because, according to Davis, any amendment of an applicant's financial certification must be supported by personal balance sheets, bank letters and similar documentation. Davis Opposition pp. 13, 17. In support of this proposition, Davis cites Radio Representatives, Inc., 6 FCC Rcd. 6995 (1991); Albert E., Gary, 5 FCC Rcd. 6235 (Rev. Bd. 1990); Pepper Schultz, 5 FCC Rcd. 3273 (1990); Marlin Broadcasting of Central Florida, 5 FCC Rcd. 5751 (1990); and Mableton Broadcasting Co., 5 FCC Rcd. 6314 (Rev. Bd. 1990). Davis Opposition, p. 14.

There is no support in law or logic for Davis' view of the Commission's requirements, particularly where, as here, an applicant is certifying that it will have financing available to meet costs which have been increased for reasons beyond its control. Where an applicant such as Wilburn has provided the data and certification initially required by Section III of FCC Form 301, there is no reason, and Davis offers no reason, why it cannot submit revised data and an updated certification when its costs have increased.<sup>7</sup> As Davis surely is aware, the cases cited in her Opposition involved applicants which had to satisfy outstanding financial issues, so that such "precedent" simply is not pertinent.

**C. The ORA Opposition**

The Opposition by ORA similarly is predicated upon patently incorrect allegations calculated to mislead the Board. Thus, ORA asserts that Wilburn did not inform the Commission when it learned that its initial site had been sold (ORA Opposition, p. 1) although, in fact, Wilburn submitted an amendment on April 13, 1994, which reported that it was advised of the sale by letter received on March 7, 1994, and that the buyer had retracted his own assurance of availability by telephone call of April 8, 1994. ORA also alleges that Wilburn has blamed an "over four month

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<sup>7</sup> It should have certain supporting documentation available but, as with the initial application, such documentation need not be submitted in the ordinary course.

delay" on its need to obtain a bank loan (ORA Opposition, p. 2) although (1) the period between April 8, 1994 and July 15, 1994 does not constitute over four-months and (2) obtaining a bank letter was merely the last of several tasks accomplished by Wilburn during that time span.

Finally, ORA urges that Commission precedent requires that Wilburn's amendment be rejected, citing Imagists, 8 FCC Rcd. 2763 (1993) and Capitol City Broadcasting Co., 6 FCC Rcd. 5525 (Rev. Bd. 1991). ORA Opposition, p. 3. However, in Imagists, the amendment was the result of the applicant's voluntary act and it waited over fifteen months after learning that its first site was unsuitable before specifying a different one. In Capitol City, the applicant delayed filing an amendment for at least eight months after it learned of the need to do so, and its failure to earlier report the loss of its financing raised a material question whether it had concealed such loss in the interim. As even ORA must recognize, the facts of the instant case are patently distinguishable.<sup>8</sup>

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<sup>8</sup> ORA, like Davis, alleges that Wilburn's amendment must include full documentation of its financial qualifications. No case citation is proffered to support this claim.

**D. Conclusion**

The Oppositions to the Wilburn amendment filed by Davis and ORA not only are unfounded, they in large part consist of plainly false and disingenuous claims of fact and law. It is respectfully submitted that the Review Board should note the character of those pleadings and be certain that the facts and filings already before the Commission are not obfuscated as a result of those submissions.

Respectfully submitted,  
WILBURN INDUSTRIES, INC.

By:

  
Eric S. Kravetz

Brown, Nietert & Kaufman  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036  
(202) 887-0600

Its Attorneys

Dated: August 2, 1994

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WILBURN INDUSTRIES, INC.	)	File No. BPH-911230MC
	)	
SHELLEE F. DAVIS	)	File No. BPH-911231MA
	)	
OHIO RADIO ASSOCIATES, INC.	)	File No. BPH-911231MC
	)	

For Construction Permit  
For New FM Radio Station at  
Westerville, Ohio

To: The Review Board

**PETITION FOR LEAVE TO AMEND**

Wilburn Industries, Inc. ("Wilburn"), by its attorneys, hereby submits its Petition for Leave to Amend its above-referenced application to report the loss of the transmitter site initially proposed in its application and to specify a new site. The circumstances surrounding the loss of the initial site and the obtaining of a replacement site also are described in the amendment.

The attached amendment is required by Section 1.65 of the Commission's rules, which requires an applicant to submit an amendment when there has been a significant change in the

information set forth in its application. Moreover, the information in the amendment shows that such change was not due to Wilburn's voluntary action, that it has been filed with due diligence, and that no other party will be unfairly prejudiced by the acceptance thereof. Accordingly, it is respectfully submitted that the attached amendment should be accepted. 4

WILBURN INDUSTRIES, INC.

By:   
Eric S. Kravetz

Brown, Nietert & Kaufman  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036  
(202) 887-0600

Its Attorneys

Dated: April 13, 1994



**AMENDMENT  
RE: TOWER SITE  
APRIL 11, 1994**

On December 30, 1991, Wilburn Industries Inc. applied to the FCC for construction permit and broadcast license for the WBBY-FM frequency (103.9) in Westerville, Ohio. In its application Wilburn Industries Inc. proposed to broadcast from the same site previously operated by WBBY-FM, and to that end secured a written assurance of site availability from the owner of the site, Mid-Ohio Communications, Inc., (Mid-Ohio) and authority from the site owner to specify such site in its application. (See Exhibit 2 of Wilburn Industries, Inc. Application).

On March 7, 1994 Wilburn Industries, Inc. received a letter from Carl Fry, attorney for Mid-Ohio advising that the site and Tower and equipment had been sold to Spirit Communications, Inc. (Copy of letter of Attorney Fry is attached hereto). Wilburn Industries, Inc. then contacted John Shumate, agent for and president of Spirit Communications, Inc. to inquire regarding continued site availability. Mr. Shumate advised Charles W. Wilburn that he would probably make the site available to all applicants including Wilburn Industries Inc. after he had consulted with his FCC counsel.

Charles W. Wilburn made inquiries as to the availability of other tower sites for broadcasting including one of Mrs. Dolores Buell of Sunbury, Ohio. Mrs. Dolores Buell provided Wilburn Industries Inc. with written assurance of a tower site located on Route 37 in Licking County, Ohio; North Latitude 40 degrees, 11

minutes, 33 seconds, West Longitude 82 degrees, 45 minutes, 07 seconds. (See letter of Mrs. Buell dated March 31, 1994).

On March 28, 1994, Mr. Shumate advised by telephone that the WBBY-FM site was available for Wilburn Industries, Inc. on the same terms and conditions as set forth in former owner, Mid-Ohio's letter of intent, and that Mr. Shumate would be sending a letter to Wilburn Industries, Inc. to that effect. Mr. Shumate authorized Wilburn Industries Inc. to specify the site in its FCC application.

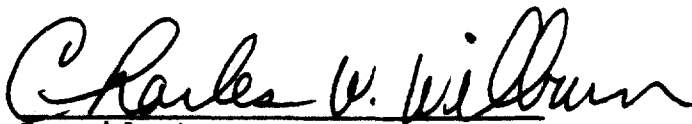
On March 31, 1994 Charles W. Wilburn prepared and sent instructions to FCC counsel, Eric Kravetz to amend the application of Wilburn Industries Inc. to reflect the site's new ownership and assurance of continued availability. (See March 31, 1994 communique).

On April 8, 1994 Mr. Shumate advised Wilburn Industries, Inc. by telephone that he was retracting his previous assurance of site availability; that no written assurance had been given to any other applicant, and that none would be forthcoming.

Wilburn Industries Inc. now amends its application to show the site specified in the Buell letter of March 31, 1994 as the new tower site location. Wilburn Industries, Inc. will amend the engineering and financial data in its application as soon as such data can be accurately prepared.

WILBURN INDUSTRIES, INC.

By:

  
President 4-11-94

**MID-OHIO COMMUNICATIONS, INC.**

Post Office Box 14  
Westerville, Ohio 43081

A, p.5

December 24, 1991

Charles W. Wilburn  
Attorney at Law  
210 S. Court Street  
Circleville, OH 431131

— WILBURN INDUSTRIES, INC. —  
"Exhibit 2"

**RE: Mid-Ohio Communications, Inc./WBBY-FM/Lease of Assets**

Dear Mr. Wilburn:

This correspondence is in regard to your recent inquiry pertaining to the lease of certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which is utilized in regard to the broadcast operation of WBBY-FM. You have indicated that you are planning to apply for the broadcast license of WBBY-FM, Westerville, Ohio, and this correspondence is to confirm that should the Federal Communications Commission award you the construction permit, Mid-Ohio Communications, Inc., the former licensee of WBBY-FM, is willing to negotiate appropriate leases with you for certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies in the amount of Six Thousand Dollars (\$6,000.00) per month.

The real estate lease and equipment lease which would commence upon the FCC granting your construction permit would include the use of the tower site (tower and building) located at State Route 37, Sunbury, Ohio 43074; studio facilities located at 14 Dorchester Court, Westerville, Ohio 43081; and equipment utilized in the operation of the station. The equipment would include some or perhaps all of the equipment itemized in the inventory accompanying this correspondence. Failure to lease all of the equipment listed in the inventory will not result in a reduced lease package price. This correspondence conveys an intent to negotiate terms of lease agreements and does not in and of itself constitute lease agreements. Although it is contemplated that mutually acceptable terms will be negotiated in regard to the various leases, there is no guarantee of that occurrence.

Within sixty (60) days of the date of this letter, you must provide Mid-Ohio Communications, Inc. with a showing of financial qualifications satisfactory to Mid-Ohio Communications, Inc. for it to enter into the above-referenced leases. Mid-Ohio Communications, Inc. reserves the right to cancel this letter within sixty (60) days of receipt of your financial information. Notwithstanding the above, at the time you receive the construction permit, Mid-Ohio Communications, Inc. reserves the right to again review your financial condition to determine if you then have financial qualifications satisfactory to Mid-Ohio Communications, Inc. to enter into the above-referenced leases. In regard to a showing of financial strength, if the lessee is a corporation, the principals of lessee will have to personally sign unconditional guarantees in regard to the lease obligations.

Mid-Ohio Communications, Inc. hereby grants you the authority to specify WBBY-FM's transmitter location in your FCC application. We wish you the best of luck in your application for licensure being prepared for filing with the Federal Communications Commission.

Sincerely,

**MID-OHIO COMMUNICATIONS, INC.**

By:   
Carl B. Fry, Authorized Representative

Attachment

# Fry & Waller Co., L.P.A.

Attorneys and Counsellors at Law

35 EAST LIVINGSTON AVENUE, COLUMBUS, OHIO 43215-5762

TELEPHONE 614/228-2300

FAX NO 614/228-6680

CARL B. FRY

BARRY A. WALLER

GEORGE R. McCANN

ROBERT H. GRIFFIN, JR.

BRYAN L. JEFFRIES

OF COUNSEL:

DAVID M. BUDA

March 2, 1994

Charles W. Wilburn, Esq.  
210 S. Court Street  
Circleville, OH 43113

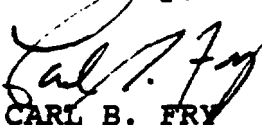
RE: Mid-Ohio Communications, Inc. / WBBY-FM / Lease of Assets

Dear Mr. Wilburn:

This correspondence is to advise you that all of the real estate and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which was utilized in regard to the broadcast operation of WBBY-FM has been sold to Spirit Communications, Inc. As you are aware, it has been over two years since the previous owner advised you that if you were awarded the construction permit for the frequency that the previous owner would be willing to negotiate with you regarding the possible lease of the real estate and/or personal property previously involved with the operation of the station. The previous owner has never been advised by you or anyone that a new constructive permit has been issued in regard to the frequency, and the real estate and personal property has now been sold. I am unaware of the new owner's intent in regard to the real estate or the personal property and if you wish to discuss the matter with the new owner, please contact Mr. John Shumate, Spirit Communications, Inc., 114 Dorchester Square, Westerville, Ohio 43081.

Since the real estate and personal property are no longer available for lease by Mid-Ohio Communications, Inc., or affiliated companies, you need to make appropriate arrangements as you deem necessary or as may be legally required in regard to your Application filed with the FCC. If you have any questions regarding this correspondence, please feel free to contact me.

Sincerely,



CARL B. FRY

/lt

DOLORES BUELL  
16910 East State Route 37  
Sunbury, Ohio 43074

March 31, 1994

Wilburn Industries, Inc.  
c/o Charles W. Wilburn  
210 South Court Street  
Circleville, Ohio 43113

Re: Lease of Certain Real Property

Dear Mr. Wilburn:

This letter is in regard to your recent inquiry pertaining to the lease of certain real property, in an area comprising five (5) acres more or less, the approximate center point of which would be approximately 600 meters northeast of the intersection of State Route 37 and County Line Road in Licking County, Ohio; North Latitude 40 degrees, 11 minutes, 33 seconds and West Longitude 82 degrees, 45 minutes, 07 seconds. I represent that I am the owner of the real estate and that I am the personal representative of the estate of Hugh Buell, my late husband, and that I have full authority to enter into a lease agreement. You have indicated that Wilburn Industries, Inc. has applied for the broadcast license of WBBY-FM, Westerville, Ohio, and this letter is to confirm that should the Federal Communications Commission award Wilburn Industries, Inc. or any of its successors or assigns the constructions permit, that I have a present and firm intention to lease to Wilburn Industries, Inc. this real property for purposes of constructing a 300 to 400 foot tower (as determined by the FCC) with antennas, lights, fencing (and such other equipment as required by the FCC, FAA, or other federal, state or local authorities) including related equipment and a related equipment building for what is necessary to the proper operation of the equipment at the site. Although this is not a binding lease agreement we have previously discussed a lease rate of FIFTEEN THOUSAND Dollars per year, payable quarterly and an initial term of 7 years with four (4) seven (7) year renewals at your option, provided that upon renewal, the lease payments will be adjusted by a cost of living factor. These terms would be subject to renegotiation by either party, taking into consideration market conditions at the time of the FCC should award the construction permit.

The real estate lease would commence upon the FCC awarding Wilburn Industries, Inc. the construction permit, or as soon as practicable thereafter. This letter conveys my present firm intention to lease to Wilburn Industries, Inc. the referenced real property; however, this letter does not in and of itself constitute


a lease agreement, nor is it a binding legal lease or agreement on either party. Upon award of the FCC construction permit we will further negotiate the terms of the lease as are appropriate.

I have reviewed the financial qualifications of Wilburn Industries, Inc. and of its principals, and determined that such financial qualifications are satisfactory to me to enter into a lease agreement.

Therefore in consideration of one dollar and other valuable consideration, receipt of which is hereby acknowledged, I hereby authorize Wilburn Industries, Inc. to specify the referenced real property as its transmitter location in its FCC application. I also give Wilburn Industries, Inc. assurance of my present firm intention that this tower site will be available to it and its successors or assigns subject to the conditions set forth above. I wish you the best of luck in pursuing you application for licensure with the FCC.

Sincerely,

  
Dolores Buell

  
Estate of Hugh Buell,  
Dolores Buell, Executor

March 31, 1994

Re: Wilburn Industries, Inc.

Please amend the application of Wilburn Industries, Inc. ("Wilburn") to construct a new FM Station at Westerville, Ohio, to show that the site and equipment to be used by Wilburn have been sold to a third party. Wilburn was first advised of this by letter received on March 7, 1994. A copy of the letter is attached. The new owner has advised Wilburn that such site and equipment will remain available to Wilburn under the same terms and conditions specified by the former owner. This assurance was repeated orally; the new owner has stated a letter confirming this assurance will be issued in the near future.

The representative of the owner who has provided this reasonable assurance to Wilburn is John Shumate. His telephone number is (614) 764-7410.

Date:

March 31, 1994

By:

Charles W. Wilburn  
President

**CERTIFICATE OF SERVICE**

I, Tracy A. Holden, a secretary in the law firm of Brown, Nietert & Kaufman, Chartered, do hereby certify that on this 13th day of April, 1994, I caused copies of the foregoing "Petition for Leave to Amend" to be delivered by first class mail, postage prepaid, to the person named below:

Arthur V. Belenduik, Esquire  
Smithwick & Belenduik, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036  
Counsel for David A. Ringer

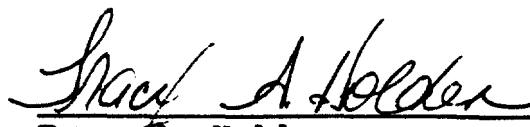
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Chief, Data Management Staff  
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Federal Communications  
Commission  
1919 M Street, N.W.  
Washington, DC 20554

  
Tracy A. Holden



Attachment B

**STATEMENT**

The undersigned Charles W. Wilburn states the following:

1. That on March 31, 1994 in a meeting with Mrs. Delores Buell, Charles W. Wilburn and Mrs. Delores Buell discussed the fact that the proposed Licking County, Ohio tower and transmitter site of Wilburn Industries Inc. was part of a larger tract of land of about 700 acres being farmed for Mrs. Buell by a farmer.
2. That in the event Wilburn Industries, Inc. was awarded the WBBY-FM license by the FCC and that a lease for the premises was entered into, the tower site would be excepted from the farmed premises, and farm rent would be adjusted accordingly.
3. That Mrs. Buell had full authority to enter into a lease with Wilburn Industries, Inc. for the proposed five acre tower and transmitter site.
4. That a check of the records of the Licking County, Ohio recorder's office revealed that there was no recorded lease on the farmed acreage or on the proposed tower and transmitter site. In the absence of a recorded lease Mrs. Buell is not limited or restricted from entering into a lease for the said premises with Wilburn Industries, Inc.
5. A commitment to release any and all rights he may have in the proposed Licking County, Ohio tower and transmitter site was executed by the farmer, Fred Hendren, a copy of which letter is attached hereto.

August 1, 1994  
Date

Charles W. Wilburn  
Charles W. Wilburn  
President of Wilburn  
Industries, Inc.



STATE OF OHIO

SS:

COUNTY OF PICKAWAY

Sworn to and subscribed in my presence this 1st day of August,  
1994.

Sharon K. Peters  
Sharon K. Peters  
Notary Public - State of Ohio  
Commission Expires: 5/06/96